

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 30, 2014

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 30, 2014. Members present were Chair Barry Stumbo, Janice Meyer, Thomas Glover; James Griggs, Noel White, Larry Forrester, and Kathryn Moore. Chairman Stumbo welcomed Mr. Forrester to the Board. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Stephanie Cunningham.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the January 31, 2014 and March 28, 2014 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously to **approve** the minutes of the January 31, 2014 meeting.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously to **approve** the minutes of the March 28, 2014 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2014-35: KEENELAND ASSOCIATION** - appeals for a conditional use permit to expand operations, including the building of a new structure and accessory parking, in the Agricultural Rural (A-R) zone, at 3801-4081 Versailles Road (Council District 12).

Representation – Bruce Simpson was present representing the appellant. He said that the applicant would like to request a 2-month postponement.

Action – A motion was made by Ms. White, seconded by Ms. Moore, and carried unanimously to **postpone C-2014-35: KEENELAND ASSOCIATION** appeal for a conditional use permit to expand operations, including the building of a new structure and accessory parking, in the Agricultural Rural (A-R) zone, at 3801-4081 Versailles Road **to the July 25, 2014 meeting.**

- b. **C-2014-10: Lexington Friends Meeting** - a request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. (Council District 1).

Staff Comment - Mr. Emmons said that the staff had received a letter requesting postponement of this item. It is on the agenda at the top of page 4, item 1. He noted that the applicant wished to request postponement for one month. He stated that the applicant said that they had a productive meeting with the Neighborhood Association, and would like to request an additional 30 days in order to continue discussing their application with the neighborhood residents.

Action - A motion was made by Ms. Moore, seconded by Ms. Meyer; and carried unanimously to **postpone C-2014-10: LEXINGTON FRIENDS MEETING** – a request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. **to the June 27, 2014 meeting.**

2. No Discussion Items - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
- a. **V-2014-32: PAUL SCHWARTZ** - appeals for a variance to reduce the required front yard from 30 feet to 0 feet in order to provide an off-street parking space in a Single Family Residential (R-1D) zone, at 6497 Athens-Boonesboro Road (Council District 12).

The Staff Recommends: **Approval** for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. A modified version of the proposed driveway will actually provide safer ingress & egress from the property.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. By allowing parking in front of the residence; a safer environment for the occupants will be created.
- c. The small size of the lot and the necessity of using the rear yard for a septic field are the special circumstances that are applicable in this case.
- d. Strict application of the Zoning Ordinance would result in on-street parking as the only allowable parking for the subject property.
- e. This request is not a willful violation of the Zoning Ordinance. The conditions of the site were created before the current owner's involvement, and the addition of the septic system further restricts the owner's use of the property.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering; or Building Inspection as a part of the normal permitting procedures.
2. Paving permit shall be obtained by the applicant.

Representation – Mr. Paul Schwartz, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board Questions – Mr. Griggs said that he would like to see a drawing of the Y-shaped turn-around mentioned in the staff report. Mr. Griggs asked if Mr. Schwartz had considered just a straight pull-in and back out or vice versa; he said he was wondering if so much of his front yard in concrete wouldn't be the best alternative. Mr. Schwartz said that he felt it was more desirable to have a way to turn around within the property, rather than backing out onto the street; for safety reasons.

Upon seeing the drawing on the overhead projector, Mr. Griggs said that he didn't think that some of the larger vehicles would be able to navigate the turn-around. Mr. Schwartz said that if a vehicle isn't able to turn around, then there would be no choice but to back up. Mr. Griggs asked Mr. Schwartz if he was ok with this. Mr. Schwartz responded affirmatively.

Mr. Griggs said that his guess was that the width of the driveway is 10 feet. Mr. Schwartz replied affirmatively. Mr. Griggs then asked if the width should be set at 10 feet; and asked if the 10 feet is the allowable width coming off the curb. Mr. Schwartz agreed. Mr. Griggs then asked if it could be dimensioned to be 10 feet and if Mr. Schwartz agreed to that. Mr. Schwartz replied affirmatively.

Ms. Meyer then asked if Mr. Schwartz had planned to add some green space. She said that she had seen some green space on the drawing. She asked if there had been discussion about providing a tree, grass, or something. Mr. Schwartz said that there is one tree that is in the right-of-way, and he didn't intend for that to be removed; as they haven't figured out an exact landscaping scheme for the property yet.

Mr. Emmons then said that is possible during the final permitting for this driveway, that one might see a mirror image of the concept sketch that was shown, but it was intended to be a 10-foot-wide, single-wide driveway with a modified Y-shape. Mr. Griggs asked if one of the objectives was to protect the big tree in the front yard. Mr. Schwartz agreed. Mr. Emmons then said if the concept is mirror-imaged, then the staff believed that they would be able to save the tree.

Citizen Comment - There were no citizens present wishing to speak to this request.

Action - A motion was made by Mr. Griggs, seconded by Ms. Meyer; and carried unanimously to **approve V-2014-32: PAUL SCHWARTZ** - appeal for a variance to reduce the required front yard from 30 feet to 0 feet in order to provide an off-street parking space in a Single Family Residential (R-1D) zone, at 6497 Athens-Boonesboro Road, subject to the staff's two recommended conditions and noting the revised drawing displayed at this meeting.

- b. **V-2014-37: SCW NEWTOWN, LLC** – appeals for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 6 feet in a Highway Service Business (B-3) zone, at 763 Newtown Pike (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Increasing the allowable fence height from 4' to 6', for the purpose of securing scaffolding and other contractor equipment, should not adversely affect the public health, safety, or welfare, nor alter the character of the area, provided that required tree plantings along the entrance drive are completed.
- b. Similar fences and some solid walls are common in the general vicinity, on properties located immediately south of the subject lot. This is fairly uncommon along a major arterial roadway locally, and a special circumstance that contributes to justifying the requested variance.
- c. The existing zoning is mostly B-4 and I-1 in this area, which permits the type of security fencing the appellant proposes. Thus, approval of this variance in a B-3 zone will not result in an unreasonable circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would result in a hardship to the appellant, and could pose difficulty to them in providing a secure site for the materials and the public.
- e. A fence permit has not yet been obtained by the appellant, or by Safway LLC. Thus, there has not been a willful violation or any other attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The fence shall be erected as located and depicted in the submitted application and site plan.
2. The fence on the subject property shall be consistent with the approved Zoning Compliance Permit that has been issued for this site.
3. The fence installation shall not occur until a Fence Permit is issued by the Division of Building Inspection.
4. The planting of the remaining seven trees along the entrance drive parallel to the property line adjacent to the mobile home park, shall be completed as required by the conditional zoning restrictions in place for the subject site.
5. The landscape buffer along the frontage of Newtown Pike, shown on the submitted site plan, shall be planted as depicted, and maintained.
6. The 24' gate proposed along the Newtown Pike frontage is subject to review and approval by both the Divisions of Traffic Engineering and Fire and Emergency Services, prior to issuance of a Fence Permit.

Representation – Mr. William R. Sutherland, appellant, was present; and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens present wishing to speak to this request.

Action - A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously to **approve V-2014-37: SCW NEWTOWN, LLC** – appeal for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 6 feet in a Highway Service Business (B-3) zone, at 763 Newtown Pike, as recommended by the staff and subject to the six conditions recommended by the staff.

- c. **C-2014-33: COMMONWEALTH BAPTIST COLLEGE** - appeals for a conditional use permit to revise a previously approved site plan, to include parking and basketball "courts" in the Agricultural Rural (A-R) zone, at 3436-3440 Versailles Road (Council District 12).

The Staff Recommends: Approval of the amendment to the conditional use for parking and a small recreational area, for the following reasons:

- a. Granting the requested amendment to the conditional use should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, since the proposed parking and basketball courts will be located to the rear of the building, will not be lighted, and will be screened from adjoining residential properties.

- b. All necessary public facilities and services, including police and fire protection, are available and adequate for the proposed use, as this use does not require sanitary sewer service.

This recommendation of approval is made subject to the following conditions:

1. The additional parking and basketball courts shall be constructed in accordance with the submitted application and revised site plan, which indicates a total of 100 off-street spaces to be provided.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the new / reconfigured parking area shall be subject to review and approval by the Division of Traffic Engineering.
4. The parking areas shall be paved, with spaces delineated, and landscaped / screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
5. Any outdoor pole lighting for the parking area shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining properties.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The basketball and tennis courts shall not have separate lighting installed.

Representation – Mr. Leon M. Dunn was present for the appellant, and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens present wishing to speak to this request.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore and carried unanimously to **approve C-2014-33: COMMONWEALTH BAPTIST COLLEGE** - appeal for a conditional use permit to revise a previously approved site plan, to include parking and basketball "courts" in the Agricultural Rural (A-R) zone, at 3436-3440 Versailles Road, as recommended by the staff and subject to the seven conditions outlined by the staff.

- d. **C-2014-34: COHEN REALTY INVESTMENTS (DBA CVH LEXINGTON, LLC)** - appeals for a conditional use permit to amend the existing site plan, as well as applicable conditions in a Professional Office (P-1)/High Density Apartment (R-4) zone, at 2368 Professional Heights Drive, 120-126 & 128-134 E. Lowry Lane (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested change in the site plan for the approved conditional use permit should not adversely affect the subject or surrounding properties. The drainage from this site had been extensively studied, and the previously approved open spaces will remain intact. Fencing will ensure proper buffering of this use from the surrounding residences.
- b. All necessary public facilities, including any modifications to the storm water system as deemed necessary by the Divisions of Engineering and Water Quality, will be available and adequate for this use.

This recommendation of approval is to remain subject to the following conditions:

1. Construction of the extended-stay hotel shall be done in accordance with the submitted application and site plan, or as amended by the Planning Commission, except as noted below.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance. In addition, zone-to-zone screening shall be provided as required and approved by the Landscape Examiner prior to the issuance of any building permits for construction.
4. The parking lots in the R-4 zone shall continue at all times to comply with the provisions of Article 16-3 of the Zoning Ordinance, which describes conditions under which a parking lot may be established and operated in an R-4 zone.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering and the Division of Water Quality. This plan shall take into account any existing downstream drainage problems.
6. The open space and tree preservation areas will not be substantially altered by an amended final development plan without prior approval of the Board of Adjustment.
7. Action of the Board shall be reflected on the Final Development Plan for the property.
8. All lighting shall be directed away from residential uses and be of a shoebox design. Any low level lighting of the walking path shall be of a bollard style, and directed away from residential uses.
9. If the Division of Traffic Engineering determines that a traffic study is warranted, then the applicant

- agrees to provide such a study.
10. The applicant will record a deed restricting the Heather Way lot to uses permitted in the current R-1C zone and prohibiting access to the extended-stay lot from Heather Way.
 11. There will be an 8-foot solid wood fence around the property where it abuts the R-1C lots, except that the fence shall not be placed in the drainage basin in the corner.
 12. There shall be planted a solid row of arborvitae or similar fast growing evergreen trees along the fence at the rear of the Heather Way lots, and the trees shall be placed along the fence adjoining the Lowry lots as necessary to supplement existing screening. Regardless, no additional trees shall be planted where the Bur Oaks would block sunlight or otherwise prevent new trees from thriving. A grove of 6-8 Bald Cypress trees shall be planted in the corner near the storm water basin. The final landscape and tree planting plan shall be approved by the Urban Forester.

Representation – Mr. Jason Morgan, attorney for the appellant, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Citizen Comment – There were no citizens present wishing to speak to this request.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover and carried unanimously to **approve C-2014-34: COHEN REALTY INVESTMENTS (DBA CVH LEXINGTON, LLC)** - appeal for a conditional use permit to amend the existing site plan, as well as applicable conditions in a Professional Office (P-1)/High Density Apartment (R-4) zone, at 2368 Professional Heights Drive, 120-126 & 128-134 E. Lowry, for the reasons recommended by the staff and subject to the twelve conditions recommended by staff.

- B. Transcript or Witnesses - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. Variance Appeals - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2014-23: SOLOMON VAN METER** - appeals for variances to: 1) reduce the front yard from 8 feet to 0 feet; 2) reduce the rear yard from 6.05 feet to 3 feet; 3) reduce each side yard from 8 feet to 6 feet; and 4) increase the maximum allowable driveway width from 10 feet to 24 feet in order to replace an existing duplex with a single-family residence in a High Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 139 Bruce Street (Council District 2).

The Staff Recommends: **Approval of the setback variances**, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem as long as the proposed parking area is removed from the property. It will allow a new (larger) single family residence on a property that currently has a non-conforming duplex structure on it.
- b. Granting the requested setback variances will not be an unreasonable circumvention of the Zoning Ordinance, because the setback requirements were written with a more typical and much larger lot in mind.
- c. The extremely small size and unusual shape of the lot (being only 30' deep but 60' wide) with an existing non-conforming structure that covers more than 80% of the lot are unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the non-conforming structure remain as it has been historically, or that any new structure be within the current limitations (including volumetric measurements) of the existing duplex.

- e. The requested variance is not a willful violation of the Zoning Ordinance rather; it is a design response to the unique circumstances of this property that were determined during the design phase of the proposed single family residence.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and a modified site plan that removes the proposed garage.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.
3. There shall be no driveway, garage, or other off-street parking space proposed on the subject property.

The Staff Recommends: **Disapproval of the driveway width variance**, for the following reason:

- a. Approval of the requested front yard setback to 0 feet renders this variance not applicable because a driveway, as defined by the Zoning Ordinance, would not exist on the subject property.
- b. Furthermore, it is recommended that this property not be allowed to have a parking space, in conjunction with the requested setback variances, because of concerns about safety of pedestrians on the sidewalk.

Representation – Mr. Solomon Van Meter, at 211 West Second Street, appellant; was present.

Applicant Comments – Mr. Van Meter said that living downtown has its charms and challenges; and one of the greatest of those is its parking. He said that the property at Bruce Street, which he had recently purchased, runs between Second and Short Streets on the west end (the property outlined in red on his exhibit on the overhead). Mr. Van Meter said that it is a small, oddly shaped lot; it is wider than it is deep; it is downtown-located a short block distance from Rupp Arena; it is in the Defined Infill and Redevelopment Area.

He presented a photo of what was on the lot two days prior to the hearing. He said that it is a duplex, and what he would like to do is replace the duplex (“flop house”) with a Single Family Residential dwelling.

Mr. Van Meter said that Bruce Street has no parking on the side of the street that fronts his property (looking towards Rupp Arena from Harrison Elementary); the opposite side of the street is not metered because of its location near downtown; it is constantly filled with cars, making it impossible to park on the street.

Mr. Van Meter then said what he is basically wanting to do is to clean up the setbacks; adjust them in the back; make it bigger (the building is about one foot from the adjoining property owner’s fence); and adjust the property line so he does not go back into the same footprint.

At this time, Mr. Van Meter said that he had one issue with the staff report, and that was his request to be allowed to have a 24-foot-curb cut to be able to park on the premises. He said that he has asked for a 0’ front lot line, which is there now.

He then said that the Division of Traffic Engineering has taken the position of any off-street parking on this site is an unacceptable safety risk, with which he disagreed. He said that the Zoning Ordinance does provide for some flexibility to address unique safety concerns, which are raised in unique situations. He then referred to section 3-3 in the Ordinance, which references the sight triangle for intersections for driveways and streets. He said that he believed that the Zoning Ordinance should be applied uniformly.

Mr. Van Meter then presented a photo of his sight triangle (demonstrated for a 4-foot-driveway and a 10-foot driveway), and said that he believed his sight triangle meets the regulations.

He then presented photos of other houses with garages or driveways opening onto the sidewalk. He said that the property next door to him was approved, within the last four years, for exactly the type of parking he is requesting.

Mr. Griggs then asked Mr. Van Meter, on the photo that he has provided, what the distance from the sidewalk to the fence was, and if it was about 5 or 6 feet. Mr. Van Meter said that it was about 10 inches from the edge of the curb. He went on to say that his property line was actually at some point, by a previous owner, deeded a 2-foot piece of what is the sidewalk.

Mr. Griggs expressed concerns about the distance from the sidewalk for pedestrians. Mr. Van Meter noted that the only changes were Traffic Engineering staff members, as he referred back to his presentation. Mr.

Griggs said that he wasn't sure if Traffic Engineering got involved in the Board Architectural Review Committee's work. Mr. Van Meter said that they did get quite involved in this situation.

Mr. Van Meter then returned to his PowerPoint presentation as he discussed further in regard to the sight triangle. He explained that on the left side of the presentation, it showed how the property line varied, going back about 4 feet from the edge of the sidewalk.

Mr. Griggs asked if the distance from the property next door was 5 or 6 feet to the garage. Mr. Van Meter said that it is exactly 10 feet from the curb. Mr. Griggs stated that he was talking about the beginning of the sidewalk. Mr. Van Meter said it was 6 feet as they discussed the distance. Mr. Van Meter noted that the Zoning Ordinance refers to the distance from the street, not the sidewalk.

Mr. Van Meter concluded by saying that without off-street parking, his property would not have any value. He asked that the setback variances, as requested, and that are recommended by the staff- that the Board would allow him up to a 24-foot curb-cut for him to accommodate up to 2 parking places.

Staff Report – Mr. Emmons presented the staff report on this appeal, and noted that he wanted to point out that the staff is in agreement with Mr. Van Meter on most of the requested variances, and that this is a one-issue discussion item that was being discussed during this hearing. Mr. Emmons said that the staff is recommending approval of the variances with the disapproval of the off-street parking due to the subject property being right on the street. He said that the Zoning Ordinance allows, when there is a non-conforming parking situation, for a new residence to be built on that property without a parking requirement. He also said that the staff feels that they can recommend approval for this with the condition of no off-street parking because it currently has only on-street parking.

Mr. Emmons went on to say that the staff's primary concern is for safety (as he presented the applicant's submitted site plan on the overhead.) He explained that the proposed structure, although going from a duplex to a single family home, would actually be larger in volume. The two-story structure that Mr. Van Meter is proposing would actually have more volumetric square footage than the existing building that was already there; therefore, all of the new, current regulations of the Zoning Ordinance need to apply for this change of use from a duplex to a single family home. He said in doing so; and applying the regulations for new construction, that's where staff had to look at the safety of the proposed use. Mr. Emmons stated that the lot is 60 feet wide; normally if a lot was 60 feet, it would be about 180 feet deep; this lot is 30 feet deep; so for as much orientation as it has to Bruce Street, it is an odd-shaped lot for the orientation that it has. Mr. Emmons said that when staff looked at Mr. Van Meter's proposal, there wasn't much room to move the garage back too far, or until there wasn't enough room to put in a functional garage at all.

Mr. Emmons presented another photo stating that the applicant did work really hard since the last hearing regarding the original staff recommendation; it was leaning towards recommending approval of the requested variances, and wanted to give the applicant a chance to come up with a design solution. He then said that the applicant prepared six sight triangle site diagrams, and staff has worked with him and Traffic Engineering to try and get the correct site plan. Mr. Emmons said that staff had looked at this very thoroughly; but in order the sight triangle diagrams to be effective, it has the assumption that the car is pointing towards the street on this particular property. As with all residential properties, it would be an impossible condition for the government to enforce that someone would only back into the garage/subject property. He said if a vehicle was to pull into the garage and be backing out, their view would be obstructed for a longer distance; and the sight triangle exhibit that was submitted doesn't apply.

Mr. Emmons said that the staff does understand that there are other similar circumstances-not just on Bruce Street that Mr. Van Meter presented, but also throughout Lexington; but that doesn't mean that staff needed to support this and make a "bad situation worse." He said that the staff is recommending approval of the requested variances, with the condition that there be no off-street parking for the subject property.

Mr. Emmons then referred to the recommendations; he noted that the Board could see in the staff's findings (finding A), that they found that granting this requested variance would not adversely affect the surrounding property; not cause a health, safety, or welfare issue, as long as the requested parking area is removed from the property. He then said, in addition to that, the staff is recommending disapproval of the driveway width variance. Part of that is on a technicality, as "driveway" in the Zoning Ordinance is defined as the shortest distance to get from the street to the required parking space. He said that if the Board grants the front yard variance to 0 feet, there is no front yard; therefore, there is no defined driveway.

Mr. Emmons said that the staff felt it important to point out that, since staff is recommending approval of this without any parking spaces on the property, not for just the technicality reasons, but also for a substantive

reason that staff does not feel that it is safe.

In conclusion of the staff's report, Mr. Emmons said, in short, it's when cars are to pull into the garage and back out on the street, then the sight distance will be compromised.

Board Questions – Ms. Meyer asked for an explanation of the difference with the garage next door and how it came to be, and if it had to do with how many feet it is off the sidewalk. Mr. Emmons said that he suspected that the garage next door had been there since before building permits were required.

Mr. Glover then stated that he had a question about the sight triangle. He asked what the Zoning Ordinance required for the apex of the sight triangle. Mr. Emmons responded that the apex is the location where the car would stop-when exiting the garage. Mr. Glover said, from Mr. Emmons' explanation, that he was going to conclude that the sight triangle begins at the end of the proposed garage door. Mr. Emmons answered that the calculation would start at the curb, and go back 10 feet into the property.

Mr. Glover said that Mr. Van Meter suggested that his proposed plan complies with the sight triangle requirements, and asked if staff disagreed with that. Mr. Emmons said that staff stands by their report. Mr. Glover said that he did not understand the answer given by Mr. Emmons. He asked if Mr. Emmons was saying that the staff does agree that it does comply with the sight triangle, but they are recommending disapproval because of its proximity to the street and sidewalk; and that it would be unsafe. Mr. Emmons agreed, saying the staff could not enforce that cars back into the garage. Mr. Glover then asked Mr. Emmons if he was saying that sight triangle would work only if the car was pulling out of the garage, pointing toward the street. Mr. Emmons confirmed that as correct.

Mr. Emmons stated that if the Board chose to approve this application with parking, there would need to be some changes to the conditions.

Mr. Griggs stated to Mr. Van Meter that he could use the sight triangle if the walls to the garage were not there; if he were to use a fence, rather than a garage wall. Mr. Van Meter said, to follow up, that the Zoning Ordinance does not specify whether or not a car pulls in or backs out.

Ms. Meyer then asked Mr. Van Meter if there was an opportunity for him to contract with someone for an off-street parking space. Mr. Van Meter said that he did not believe that to be economically viable.

Chairman Stumbo stated that he appreciated Mr. Van Meter's due diligence, but that he (Mr. Van Meter) was aware that when he bought this property, there was no off-street parking; and that is something that the Board would have to consider.

Chairman Stumbo then asked the Board members if they had any further questions or comments for Mr. Van Meter or the staff.

Mr. Glover asked the Chair if a bifurcated motion would be appropriate for this, and how the Board handles these situations. Chairman Stumbo asked the staff if the Board could approve some variance, but disapprove the garage and driveway width proposed. Mr. Emmons said that if the Board agreed with the staff, the conditions could be left just as they are; if they agreed with applicant, there would be some minor changes that would need to be made to the staff recommendation listed on the agenda. Mr. Emmons then noted that the applicant had proposed a revised condition (#3) for the Board to consider.

Chairman Stumbo stated that he believed that the Board could make one motion to cover both actions. He then said that a motion could be made to approve the setback variance, and disapprove the driveway in one motion.

Citizen Comment – There were no citizens present wishing to speak to this request.

Action – A motion was made by Mr. Glover, seconded by Ms. Moore and carried unanimously to **approve V-2014-23: SOLOMON VAN METER** - appeal for variances to: 1) reduce the front yard from 8 feet to 0 feet; 2) reduce the rear yard from 6.05 feet to 3 feet; 3) reduce each side yard from 8 feet to 6 feet; and 4) increase the maximum allowable driveway width from 10 feet to 24 feet in order to replace an existing duplex with a single-family residence in a High Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 139 Bruce Street; and **disapprove** driveway width variance for the reasons recommended by the staff and subject to the three conditions proposed by staff.

2. **V-2014-30: DIANNE WILSON** - appeals for a variance to increase the maximum allowable height of a front yard privacy fence from 4 feet to 8 feet in a Single Family Residential (R-1C) zone, at 669 Mt. Vernon Drive (Council District 3).

The Staff Recommends: Disapproval, for the following reasons:

- a. The requested variance does not arise from a special circumstance that does not generally apply to land in this same zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the requested front yard fence height variance.
- b. Granting the requested variance will cause this property to be out of character with other in the neighborhood, as very few properties have any front yard fences, much less at the height(s) requested by the applicant.
- c. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of her property, as a 4' tall fence in the front yard is allowed by right in this zone, with the issuance of a Fence permit.

Representation – Ms. Dianne Wilson, appellant; was present.

Chairman Stumbo stated that the Board would like to hear from the staff first and then from the applicant.

Staff Comments - At this time, Mr. Emmons explained that this was a front yard fence height variance request from the allowable 4 feet in height to a maximum of 8 feet, and the applicant has requested that if the 8 feet is unacceptable, that she would like to request a 6-foot height for the fence.

Mr. Emmons said that the property is located at 669 Mt. Vernon Drive. He then presented the applicant's site plan on the overhead, showing the layout of her property with the house. He went on to say that the area being requested for the variance is on one side of the property, from the front of the house to Mt. Vernon Drive. This is the area from the primary wall plan, to the right-of-way, that is limited to a maximum of 4 feet in height for the fence. He said that the applicant also showed some of the proposed type of fence that she planned to place on her property, and those are allowable fences by the Zoning Ordinance; so those are not part of the request at this hearing. Chairman Stumbo asked Mr. Emmons if she was allowed to build a 4-foot fence. Mr. Emmons responded affirmatively.

Mr. Emmons then displayed the aerial photos and explained the purpose of this request. He said that the primary justification that Ms. Wilson has given was based on a property dispute between her and her neighbor, and she is requesting a taller fence as a solution. He also said that the staff is sympathetic toward the dispute, but cannot approve a fence that is significantly out of character with the area.

He noted that Ms. Wilson has submitted several pictures, and documented all of the cases that she could find that are near the street, and are 6 feet or taller in that neighborhood. He said that primarily most of the examples she had given are corner lots where the 6-foot fences are in the rear yard or side street side yard.

Mr. Emmons said that staff is recommending disapproval of the request because they do not see where the request arises from any special circumstance, or anything unique to the physical nature of the property.

Board Question – Mr. Glover asked for clarification-if the request is for 6 feet or 8 feet; but if she only built a 4 foot fence, she would not need a variance. Mr. Emmons responded affirmatively.

Chairman Stumbo then asked Ms. Wilson as to her reasoning for why she was requesting an 8-foot fence that seemed out of character with the neighborhood.

Applicant Comments – Ms. Wilson stated that her request was based on some dissimilar preferences about foliage between her and her neighbor. She noted that her neighbor has taken unilateral actions that have affected her property or interests, without her permission.

Ms. Wilson said that this has been going on for many years, as she explained one incident of her neighbor trespassing on her property during the year of the ice storm to remove limbs. She also said that she is not unwilling to consider the neighbor's request to address the problem with foliage, but wants the opportunity to consider it. She said that she would be more comfortable with a physical and psychological reminder of a fence, to impress upon neighbors that the property belongs to her.

Board Comment – Chairman Stumbo stated that the situation is unfortunate, but the Board must consider

the case on its merits. He then asked if there were any citizen comments to be heard at this time.

Mr. Emmons then stated that staff had distributed two letters of opposition to the Board at the end of the staff's presentation.

Citizen Comments – Mr. Patrick Schneider stated that he has lived on Mt. Vernon for 25 years. He said that “this whole thing is a little embarrassing,” and that Mt. Vernon has been a nice neighborhood over the years.

Mr. Schneider submitted a petition with 51 signatures from residents who live on several nearby streets, who were in opposition to the 8-foot high fence. He said that he felt this would be a bad precedent and unsightly.

Ms. Amy Clark, 628 Kastle Road, stated that this situation is regrettable, and she was glad that there is a Zoning Ordinance that permits only a 4-foot height for a front yard fence. She said that she would like to ask the Board to not allow for the fence to be directly next to the sidewalk.

Chairman Stumbo, at this time, asked if there was anyone else who wanted to speak in opposition. There were none.

Applicant Rebuttal – Ms. Wilson thanked Ms. Clark for her comments. She then said in reference to Ms. Clark's statement regarding the fence not being allowed to extend to the sidewalk, she had inquired with the staff about this, and was advised that the fence must be a minimum of 10 feet back from the curb. She said that she had measured her front space, which measured 10 feet and 11 inches; and, which if her understanding is correct, she has the right to put a front yard fence from the front plan of her house, right up to the sidewalk since it does not fall within 10 feet.

Ms. Wilson concluded with that she was trying to create a more civilized situation between her and her neighbor.

Action - A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to **disapprove V-2014-30: DIANNE WILSON** - appeal for a variance to increase the maximum allowable height of a front yard privacy fence from 4 feet to 8 feet in a Single Family Residential (R-1C) zone, at 669 Mt. Vernon Drive for the reasons recommended by the staff.

3. **V-2014-39: JIMMY BRASHEAR & GAY KANAI** – appeal for variances to: 1) reduce the required front yard from 20 feet to 4 feet; 2) reduce the side street yard from 20 feet to 6 feet; and 3) reduce parking by 50% from (6 spaces to 3 spaces) in a Light Industrial (I-1) zone, at 559 East Third Street (Council District 1)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. In particular, the proposed building will not create a sight distance hazard, as it will be located outside of the sight triangle of the intersection of East Third Street and Withrow Way. Furthermore, it will not be out of character with properties in the general vicinity, as some of the surrounding properties in this urban neighborhood have existing setbacks that are similar to those proposed.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as the Ordinance promotes the consideration of variances for infill & redevelopment projects that will enhance the character of an area. This land use will do so.
- c. The small size and odd shape of the lot, in conjunction with the unique nature of the proposed niche business, are unique circumstances that justify the requested variances for this live/work mixed-use proposal.
- d. Strict application of the Zoning Ordinance would make the development of this small lot very difficult, and would likely result in a less desirable light industrial use for this area.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather stems from a design response to the unique circumstances of this property that were determined during the normal building permit review process.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Traffic Engineering or Building Inspection as a part of the normal permitting procedures.

2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit prior to construction, and a Zoning Compliance Permit from the Division of Planning and a Certificate of Occupancy from the Division of Building Inspection.

Representation – Mr. James Brashear, appellant; and Lynn Pedigo, designer of the building and site layout were present; and they indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – Mr. Steven Vickroy, attorney representing Mr. Doug Ball, owner of 539 East Third, was present. He said he was also representing Pfizer Investments, owner of 549, 557, and 547 East Third Street and he distributed exhibits to the Board.

Mr. Vickroy stated that this opposition focused on two issues: 1) The sight triangle at the intersection of East Third Street and Withrow Way, including concerns about increased pedestrian traffic in the area due to recent housing construction. He said that this poses a safety concern with regard to the building being built so close to East Third Street. Mr. Vickroy said that they urge the Board to postpone this request or to disapprove it. He said he also has concerns that use does not fall within the allowable uses of the existing zoning classification. He stated that his clients contend that the proposed building is an urban residence with an attached catering business. In conclusion, Mr. Vickroy added that there might be trees that cross the shared property line that could prevent construction of the proposed building.

Board Questions – Chairman Stumbo asked staff to address the safety concerns, trees, and zoning classification issues presented by Mr. Vickroy. Mr. Emmons stated that staff did not address trees in the staff report, as this would likely be a private matter.

Mr. Emmons stated that with regard to the sight triangle; staff did not intend any approval of the building within the sight triangle. He then said that the I-1 zone does allow catering of food. Unfortunately, according to his memory, he used an incorrect "M" value when calculating the sight triangle. The Division of Traffic Engineering will have the final authorization on the matter. He said that the first floor commercial use, as well as the accessory dwelling unit, meets the use requirements of the zone. The accessory dwelling unit allows property owners to be caretakers in order to create live/work environments. Mr. Emmons made reference to the opposition with regard to the floor area ratio. He said that garage itself does not count in the FAR definition, but the use of the garage is for the business. He then said that the staff still sees the proposed dwelling unit as accessory to the business, and is compliant with the I-1 zone.

Mr. Glover then asked what difference it would make if this area was zoned for residential use, and if it were, would the staff's opinion be altered. Mr. Emmons responded that the primary use (catering business) would not be allowed in a residential zone.

Mr. Griggs then asked if there was a sidewalk on Withrow Way. Mr. Emmons answered that there is no sidewalk; it is an alley, and that no sidewalk is necessary for the proposed use.

Mr. Griggs also asked if the large trucks belonging to opponent's clients would be negatively affected by proposed landscaping, or if they were talking about the sight triangle. Mr. Vickroy said that the clients have more concerns about the sight triangle.

Appellant Comment – Mr. Brashear and Ms. Pedigo distributed information to the Board. Ms. Pedigo stated she works on a lot of historic preservation in downtown and lives in downtown, and she wants to restore the area and bring back residents.

As Ms. Pedigo presented the site plan on the overhead, she stated that the front porch is open and the façade of the house is set back. She noted that the plantings shown on the site plan are conceptual and can be removed.

She then said that, with regard to the waste receptacle storage, it can be moved. She added that the parking space in the rear would accommodate handicap users.

Ms. Pedigo explained that the company provides in-flight catering to private jet services at Bluegrass Airport. She said that the owners have another residence, but might stay on the property.

She then noted the agreement from Building Inspection and Traffic Engineering for the "go ahead". Ms. Pedigo opined that this is a "witch hunt" because property was previously owned by Community Ventures. Ms. Pedigo concluded that the intention is not to cause sight triangle issues.

Ms. Moore then asked if the catering business already exists. Ms. Pedigo responded affirmatively. Ms. Moore then asked where it was previously located. Mr. Brashear then answered it was moving from Lewis Street; he lives upstairs, and he wants to downsize to a smaller building.

Ms. Pedigo opined that opposition wanted to purchase property and use for semi traffic. She stated that the appellant wants to maintain a mixed use. She also added that trees are on the appellant's property, by at least 2 or 3 feet.

Rebuttal Comments – Mr. Vickroy stated that his clients were not making any allegations against the property owner. He then said that he would like to ask the Board to consider that Mr. Emmons indicated that his sight triangle calculations were incorrect. He then stated that staff might have to make disapproval recommendation once the sight triangle is recalculated.

Discussion - Mr. Griggs stated that the first condition noted that the appellant would modify the building if required by Traffic Engineering. Ms. Pedigo then stated that the appellant has no issues with moving the building, if necessary.

At this time, Mr. Doug Ball stated that he owns 539 East Third and his partnership owns other properties. He said that the tractor trailers have difficulty making turns onto Withrow Way, which is no an alley. He then went on to state that a 2.5-story building, set back 4 feet on the subject property, would completely block the view for cars trying to turn in any direction.

He then stated that community members want services or restaurants for the neighborhood on the subject property. Mr. Ball said that some concerns were about the appellant backing out of a garage onto Withrow Way. He then accused the former owner of "doing a back-door-deal" with the appellant to acquire his property on Midland Avenue.

Board Questions - Mr. Glover then asked staff if condition #1 was flexible enough to allow for correction of the sight triangle calculation. Mr. Emmons responded affirmatively. Mr. Glover then asked who was responsible for that. Mr. Emmons answered that the Division of Traffic Engineering would have to sign off on the sight triangle, prior to issuance of a building permit.

Mr. Ball then said that he spoke with the fire representatives, and they indicated that they were concerned about the ability to drive emergency vehicles if the building is constructed. Mr. Griggs stated if Mr. Ball's trucks are not using the appellant's property; then they should not have a concern about the dimensions of the building. He said that as long as the appellant contains the building on the property, it should be fine. Mr. Ball said that he contends that construction of the building will block the sight triangle to the extent that his trucks will have to stop use completely. He then asked Mr. Griggs if he had actually driven by and seen the property. Mr. Griggs indicated that he has seen the drawings. Mr. Ball then said that there was too much reviewing the drawings, but not enough viewing the actual conditions. He also stated that the view is obstructed because the building is too tall.

Rebuttal Comment – Ms. Pedigo stated that the building will not be 2.5 stories; it will be at least 8 feet from the side yard on Withrow Way, and 4 feet at the corner, at the closest point from the front porch.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously to **approve V-2014-39: JIMMY BRASHEAR & GAY KANAI** – appeal for variances to: 1) reduce the required front yard from 20 feet to 4 feet; 2) reduce the side street yard from 20 feet to 6 feet; and 3) reduce parking by 50% from (6 spaces to 3 spaces) in a Light Industrial (I-1) zone, at 559 East Third Street, based on the staff's recommendation of approval and subject to the two conditions.

D. Conditional Use Appeals (Discussion Items)

1. **C-2014-31: IAMAW, DISTRICT 27** - appeals for a conditional use permit for a temporary structure for up to 180 days in a Neighborhood Business (B-1) zone, at 5693 Briar Hill Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject lot or surrounding properties. An approved temporary structure of this type in the B-1 (Neighborhood Business) zone would not be an unusual or inappropriate situation. Furthermore, the location of this office trailer will

- comply with all required setbacks of the B-1 zone.
- b. All necessary public facilities are available and adequate for this use, including police and fire protection.

This recommendation of approval is made subject to the following conditions:

1. That the temporary structure (office trailer) be set up and installed according to the submitted site plan and application.
2. That a Zoning Compliance Permit and any applicable permit from Building Inspection be obtained by the applicant within 30 days of Board action.
3. That the permits issued for this office trailer remain valid for a period not to exceed at total 180 days from date of placement (from March 17, 2014-October 12, 2014).

Representation – Mr. Matt Lanshear, on behalf of International Association of Machinist and Aerospace Workers, District 27, and Mr. Chris Bradley representing the union, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them. Mr. Lanshear stated that the appellant met with the opposition and resolved their differences amicably. It was added that the opposition was related to a temporary sign, not the matter before the Board.

Chairman Stumbo asked the Board if they had any questions for the applicant or staff. There were none.

Citizen Comment – There were no citizens present wishing to speak to this request.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore and carried unanimously to **approve C-2014-31: IAMAW, DISTRICT 27** - appeals for a conditional use permit for a temporary structure for up to 180 days in a Neighborhood Business (B-1) zone, at 5693 Briar Hill Road, per the recommendations of staff and subject to the three conditions outlined by staff.

- IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time. Chairman Stumbo announced that he would not be in attendance for July's BOA meeting. Ms. Moore announced she would have to leave early at the July's BOA meeting
- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.
- Mr. Sallee reminded the Board members of two upcoming APA audio-conference training opportunities.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be June 27, 2014.
- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:57 p.m.

Barry Stumbo, Chair

James Griggs, Secretary